



Homeland  
Security

June 5, 2013

MEMORANDUM FOR: Distribution

FROM: Jonathan R. Cantor   
Acting Chief Freedom of Information Act Officer

SUBJECT: Updated Policy for Department of Homeland Security (DHS)  
Application of FOIA Exemption 6 to DHS Personnel Information  
Contained within Agency Records

This memorandum provides updated guidance on how to process DHS personnel information contained within agency records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. It supersedes the joint memorandum issued by the Chief FOIA Officer and Associate General Counsel for General Law on March 4, 2008, as well as the subsequent memorandum issued by the Chief FOIA Officer on November 24, 2010.

On January 21, 2009, the President directed agencies to process FOIA requests “with a clear presumption: [i]n the face of doubt, openness prevails.”<sup>1</sup> The Attorney General reiterated the presumption of disclosure in his FOIA Memorandum issued March 19, 2009, and encouraged agencies to make discretionary disclosures of information.<sup>2</sup> The Attorney General further instructed that “[a]n agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.”

It is Department policy to evaluate the release of personally identifying information on employees on a case-by-case basis. Each such evaluation must consider the factors set forth in the *Reporters’ Committee* decision, which held that “information that does not directly reveal the operation or activities of the federal government falls outside the ambit of the public interest that the FOIA was enacted to serve.”<sup>3</sup> When processing records under FOIA, the Department should carefully consider whether the disclosure of identifying information about the individual employees will shed light on how DHS performs its statutory duties, whether release would cause a “clearly unwarranted invasion of personal privacy,” and whether the privacy interest of the employee outweighs the public interest in that information.<sup>4</sup> Note that agency spokespersons and senior agency officials have a lesser expectation of privacy than lower-level, administrative employees.

<sup>1</sup> Memorandum for the Heads of Executive Departments and Agencies, “Freedom of Information Act,” January 21, 2009, [http://www.whitehouse.gov/the\\_press\\_office/FreedomofInformationAct](http://www.whitehouse.gov/the_press_office/FreedomofInformationAct).

<sup>2</sup> Memorandum for the Heads of Executive Departments and Agencies, “The Freedom of Information Act (FOIA),” March 19, 2009, <http://www.justice.gov/ag/foia-memo-march2009.pdf>.

<sup>3</sup> *Dept. of Justice v. Reporters Cmte. for Freedom of the Press*, 489 U.S. 749, 775 (1989).

<sup>4</sup> 5 U.S.C. § 552(b)(6).

To implement this case-by-case policy consistently across the components, the Department's analysis should incorporate the following considerations. FOIA does not contemplate "a blanket exemption for all federal employees involved in homeland security."<sup>5</sup> Indeed, Office of Personnel Management regulations indicate that federal employees generally have no expectation of privacy regarding their names, titles, grades, salaries, bonuses, position descriptions, and duty stations. Accordingly, these types of personnel information should generally be released under FOIA.<sup>6</sup>

Though agencies are to apply the presumption of openness, the Attorney General recognized that some circumstances warrant application of FOIA's statutory exemptions to withhold certain information. A case-by-case analysis may determine that certain personally identifying information about individual DHS employees does not directly shed light on the operations or activities of the Department. Below are three common situations in which analysis is likely to suggest withholding personally identifying information of certain DHS personnel:

- The Department is more likely to withhold an individual's direct phone number and email address than an office's general main phone number and public or general email address.
- Law enforcement components<sup>7</sup> may redact personally identifying information including employee names, phone numbers, and email addresses under FOIA Exemption 6 given the substantial personal privacy interests of law enforcement personnel in their individual contact information. In addition, Exemption 7(C) may allow these components to withhold certain personnel information compiled for law enforcement purposes.
- Intelligence components (I&A) may redact personally identifying information including employee names, phone numbers, and email addresses under FOIA Exemption 6 or other applicable exemptions, such as Exemption 3, given the strong personal privacy interest in withholding the names of employees with intelligence duties.

You may direct questions to Delores J. Barber, Deputy Chief FOIA Officer, at (202) 343-1743 or [FOIA@dhs.gov](mailto:FOIA@dhs.gov).

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<sup>5</sup> *Elec. Privacy Info. Ctr. v. Dep't of Homeland Sec.*, 384 F. Supp.2d 100, 117 n.26 (D.D.C. Dec. 22, 2005) (quoting Department of Defense Director for Administration and Management Memorandum for DOD FOIA Offices 1-2 (Nov. 9, 2001), available at <http://www.defenselink.mil/pubs/foi/withhold.pdf>).

<sup>6</sup> 5 C.F.R. § 293.311.

<sup>7</sup> Law enforcement components include the Federal Law Enforcement Training Center, the Federal Protective Service, the Office of the Inspector General, U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, U.S. Coast Guard, and U.S. Secret Service.